

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Garrow v. Sallay*,
2025 BCSC 984

Date: 20250528
Docket: S210998
Registry: Vancouver

Between:

**Phillip Deane Garrow, ADC Projects Ltd., and
Phillip Deane Garrow dba ADC
Projects Ltd.**

Plaintiffs

And

**Leslie Louie Sallay also known as Les Sallay,
Michelle Gay-Carrington and Jasmine
Michele Sallay-Carrington**

Defendants

Before: The Honourable Justice Whately

Reasons for Judgment

Counsel for the Plaintiffs:

D.J. Barker

Counsel for the Defendants:

R. Josephson

Place and Date of Trial:

Vancouver, B.C.
September 9-13 & 16-20 2024

Place and Date of Judgment:

Vancouver, B.C.
May 28, 2025

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Overview

[1] Philip Garrow and Leslie Sallay are property developers who were at one time in business together. Their business relationship ended badly on several fronts in 2020. Since that time Mr. Garrow and Mr. Sallay have been embroiled in litigation against each other. A significant part of their dispute concerned properties they had invested in together, resulting in claims of civil fraud against Mr. Garrow that were heard and decided by this Court in a 2023 decision, *Jeana Ventures Ltd. v. Garrow*, 2023 BCSC 1831.

[2] The subject matter of this trial involves an aspect of the parties' business relationship that ran parallel to, but was separate from the investment agreements

that were the subject of previous litigation and the decision cited above.

[3] In or around the Spring of 2019, Mr. Garrow and his company ADC Projects Ltd (“ADC”) agreed to provide general contractor/renovation services to Mr. Sallay with respect to two groups of properties owned by him and his family members.

[4] Unfortunately, this agreement also resulted in Mr. Sallay bringing claims of civil fraud against Mr. Garrow and ADC, in addition to breach of contract and other claims. For his part, Mr. Garrow seeks payments from Mr. Sallay that he says are outstanding from the work he and his company did on the properties in question.

[5] For the reasons that follow, I grant judgment in favour of Mr. Sallay and the other plaintiffs by counterclaim, and dismiss the claims of Mr. Garrow and his company.

[6] Much of my decision can be narrowed down to one key issue: Mr. Garrow is not a credible witness. In his oral submissions, Mr. Garrow’s counsel urged me to focus on the documents in evidence as opposed to his client’s testimony. However, I found the whole of Mr. Garrow and ADC’s evidence, both with respect to their own claim — and in defence of the claims against them — not convincing in any respect.

Background

Parties, Properties, and Proceedings

[7] In this action, Mr. Garrow and ADC are the plaintiffs and defendants by counterclaim. Mr. Sallay, his wife Michelle Gay Carrington, and his daughter Jasmine Michelle Sallay-Carrington, are the defendants and plaintiffs by counterclaim. Ms. Sallay-Carrington and Ms. Carrington have ownership interests in the properties at issue, but played no part in the trial.

[8] When I refer to Mr. Sallay and Mr. Garrow, I may also be referring to the plaintiffs by counterclaim and the defendants by counterclaim collectively and respectively. Due to the nature of the parties’ claims and the dollar values attached to them, this trial largely proceeded with the focus on the claims brought by the plaintiffs by counterclaim; and with the plaintiffs’ claims and evidence taking up only a fraction of the time. Mr. Garrow chose not to provide written submissions to the court at the end of trial; although his counsel did make some oral submissions.

[9] Mr. Garrow is a property developer. He is the director and principal of ADC, a licenced residential builder. At the time of trial he was 52 years old. He grew up in the lower mainland, and attended university in the United States. He returned to the Vancouver area in or around 1998, and began his career in building and renovating real estate. He began with condo renovations, then moved to large scale private home construction in West Vancouver. His primary focus was building new homes, as opposed to renovating, but he and his companies occasionally undertook renovation projects that he considered to be “substantially” new home builds.

[10] Mr. Sallay is also a property developer. At the time of trial he was 76 years old. He described himself as a lifelong real estate developer, with a focus on multi-family residential properties. In the course of his career he would purchase strata-titled buildings, rehabilitate them, and then sell the units for a profit. He would also build new condominium projects. He stated he had been in this line of work for over 45 years.

[11] Both Mr. Garrow and Mr. Sallay profess to be experienced, skilled property developers with significant experience with respect to property investment and development in the lower mainland. Their initial business venture together involved the co-development of high-end properties in West Vancouver.

[12] As mentioned above, this venture ultimately ended in litigation, but prior to this, Mr. Sallay and Mr. Garrow’s existing business relationship resulted in Mr. Sallay engaging Mr. Garrow in the renovation of certain Vancouver properties in 2019.

[13] These properties were owned in various combinations by Mr. Sallay and his family members and are described as follows:

- a. Unit 201 and Unit 203, 2458 York Avenue, Vancouver, British Columbia (the “York Avenue Properties”); and
- b. 2142 and 2146 West 1st Avenue Property, Vancouver, British Columbia (the “West 1st Avenue Properties”).

[14] Unfortunately, this endeavor also ended poorly.

[15] On February 1, 2021, Mr. Garrow and ADC filed the within action against Mr. Sallay and his family members, seeking payment of two amounts relating to the above properties, namely: \$24,397.03 linked to a lien against one of the York Avenue Properties, and \$60,266.28 in respect of a holdback amount from the West 1st Avenue Properties.

[16] On February 24, 2021, the plaintiffs by counterclaim filed a response to civil claim, and on September 3, 2021, the defendants filed an amended response to civil claim and counterclaim against Mr. Garrow and ADC. On September 24, 2021, the plaintiffs filed their response to counterclaim.

[17] The counterclaim states, in summary, that Mr. Garrow and ADC committed civil fraud and breached their contract with Mr. Sallay, with respect to the renovation of the West 1st Avenue Properties.

York Avenue Properties

[18] Ms. Sallay-Carrington was the registered owner of the lands and premises located at Unit 201, 2458 York Avenue in Vancouver. On April 23, 2021, Unit 201 of the York Avenue Properties was sold and is no longer owned by Ms. Sallay-Carrington.

[19] Mr. Sallay and Ms. Gay Carrington were the registered owners of the lands and premises located at Unit 203, 2458 York Avenue in Vancouver. On April 9, 2022, Unit 203 of the York Avenue Properties was sold and is no longer owned by Mr. Sallay and Ms. Gay-Carrington.

[20] The claims relating to the York Avenue Properties relate to two liens filed by Mr. Garrow and ADC:

- a) Lien #CA8640110 in respect of Unit 201: Mr. Sallay says that \$25,910.33. has been paid into court to the credit of this Action.
- b) Lien #CA8640116 in respect of Unit 203: In his notice of civil claim, Mr. Garrow says this lien was for \$24,397.00. Mr. Sallay says that he paid \$28,908.12 as a full payment with respect to this lien, and it has been cancelled.

[21] Mr. Garrow seeks the payment of the amount paid into court pursuant to the first lien be submitted to him, in respect of amounts still owed to trades and creditors by ADC.

[22] Mr. Sallay seeks the amount paid into court, \$25,910.33 to be returned to him, and further seeks the reimbursement of the \$28,908.12 he paid towards the second lien.

[23] Neither party spent much time on the York Avenue Properties' claims. Mr. Garrow says that because Mr. Sallay largely "ignored" the York Avenue Properties, judgment should go in his favour for the remaining lien amount. Mr. Sallay says that Mr. Garrow's claims of amounts owed to him from trades is speculative and not grounded by the evidence.

West 1st Avenue Properties

[24] Ms. Gay-Carrington was the registered owner of the land and premises located at 2142 West 1st Avenue, Vancouver, British Columbia (the "2142 West 1st Avenue Property"). The 2142 West 1st Avenue Property was sold on October 19, 2021.

[25] Mr. Sallay was the registered owner of the land and premises located at 2146 West 1st Avenue, Vancouver, British Columbia (the "2146 West 1st Avenue Property"). The 2146 West 1st Avenue Property was sold on September 13, 2021.

[26] On December 11, 2020, Mr. Garrow filed a Claim of Lien under #CA8640151 in the amount of \$60,266.28 against the West 1st Avenue Properties. On October 15, 2021, by a consent order of this Court, the Claim Lien for \$60,266.28 was cancelled and ordered to be removed from the title to Unit 2142.

[27] Mr. Garrow's only claim with respect to the West 1st Avenue Properties is for payment of \$60,266.28. He says that this amount is the balance of the holdback amount withheld by Mr. Sallay with respect to the renovation of the West 1st Avenue Properties. He says he requires this amount to make payments to creditors for work done on Mr. Sallay's property while their agreement was in effect.

[28] Mr. Sallay says that Mr. Garrow has failed to provide any evidence that there are any pending claims against Mr. Garrow or ADC for any or all of the \$60,266.28, such that this amount should be remitted to Mr. Garrow, particularly given his claims of financial misconduct resulting in a much larger overpayment by Mr. Sallay to Mr. Garrow.

[29] I agree that Mr. Garrow — whether in his testimony, his witnesses' testimony, or by way of any clear reference to his documents — failed to establish what if any amounts remained owing to contractors or creditors. Mr. Garrow's argument on this point boils down to this: he says the evidence shows that he was paid \$60,000 less than he was owed, thus, the holdback should be paid to him.

[30] I was provided little to no guidance by counsel for Mr. Garrow, whether in submissions or again, by any references to evidence or testimony, upon which to properly consider this claim, or weigh it against the significant amount of evidence presented by Mr. Sallay that Mr. Garrow was in fact paid in excess of what he should have been. While there was some vague testimonial evidence from certain contractors about amounts that may remain owing, both confirmed that for various reasons, they chose not to pursue legal claims against Mr. Garrow, or to otherwise pursue payment of specific amounts.

[31] I therefore dismiss Mr. Garrow's claim for \$60,266.28, at the outset.

The West 1st Avenue Properties Renovations

[32] In or around June and July of 2019, Mr. Sallay and Mr. Garrow discussed whether Mr. Garrow and ADC could assist with a stalled renovation project at Mr. Sallay's family's properties at West 1st Avenue.

[33] Mr. Sallay wanted to redo the two condominium properties and sell them as high-end townhouses, based on the plans of Mr. Sallay's architect, Robert Turecki. In late 2018, Mr. Sallay retained a company called Fairtrade Works to undertake this project.

[34] After approximately five months it was determined that Fairtrade did not have the manpower to complete the West 1st Avenue Properties project in a reasonable period of time. On June 1, 2019, Mr. Sallay terminated the services of Fairtrade Works. Before this contract was terminated, Mr. Sallay paid Fairtrade

approximately \$164,170 against a total estimated budget of just over \$1,050,000 for the entire renovation.

[35] Mr. Sallay believed his existing working arrangement with Mr. Garrow in West Vancouver would mean an efficient and easy flow of trades between the two projects, and as of the Spring of 2019, he had yet to discover anything amiss with their business dealings in West Vancouver. Mr. Sallay considered himself to be experienced and sophisticated in the field of real estate, and in his testimony clearly conveyed a level of confidence borne of decades of “hand shake” deals, however ill advised it may seem when it comes to expensive construction projects.

[36] According to Mr. Sallay, the terms of the West 1st Avenue Properties renovation project were confirmed in a July 8, 2019 email (the “Email Agreement”), in which Mr. Garrow wrote:

Hi Les

In light of the collaboration we have on other projects happy to assist with your project without the margins we would typically charge (15% for a new house or 18% for a renovation). At the same time, we obviously don't want to lose money. We do not “upcharge” contracts or hide invoices. Invoices are billed at cost and always supported by the back up source document. If allocation for overage accounts do not get used there is not [sic] cost to you.

Based on a July 15th start date and continued un-interrupted work (including being allowed to work Saturdays) March 15th is an aggressive target for completion.

Allowing for the fact I would assign a dedicated Site Manager to the project, our hard costs to engage would be as follows:

Project Manager \$8,500/month @ 8 months = \$68,000.00

Administration Expense (invoice management, payroll, admin expense, etc) = \$25,000

Total \$93,000

We are happy to complete the work at this hard cost.

Cheers

Phil Garrow

[37] Mr. Sallay said that he understood the deal to be as stated in the Email Agreement, namely, that ADC/Mr. Garrow would hire an on-site project manager who would be paid \$8,500 per month to manage the project on the ground for eight months, for a total of \$68,000. Mr. Sallay would pay the amounts invoiced by

trades or suppliers to ADC, with invoices submitted to Mr. Sallay by ADC in support of the amounts claimed. ADC/ Mr. Garrow would manage the direct payment of the trade and materials invoices. ADC would not add an “up charge” to those invoices. ADC/Mr. Garrow would charge an additional \$25,000 fee for the administrative management of the project, for a total project management cost (e.g., over and above the materials required and the trades doing the work) of \$93,000.

[38] Mr. Sallay understood this to be a fixed fee for site supervision and project management for the eight-month period. He followed up with Mr. Garrow on the same date, and confirmed the following: “To clarify, if the Project Manager and Site manager are 2 different people and both are included in the \$93,000, we’re good to go. Les”. Mr. Garrow replied “Yes project manager and site manager are included in the 93k figure”.

[39] For his part, Mr. Garrow understood that Mr. Sallay was not happy about the progress of work at the West 1st Avenue Properties, and had been impressed with ADC’s work in West Vancouver. He said that his initial response was that he could not supervise the work himself, as he had six to seven projects in West Vancouver on the go, and was already working 80-90 hour weeks. He and ADC could step in as the licenced builder, but he would rely on Vladislav Pak and his company Vlad Construction to be the key on-site manager mentioned in the Email Agreement.

[40] Mr. Garrow said the project was not really a renovation, it was closer to a total reconstruction. He said when he reviewed the site, it was essentially a 100-year-old house stripped to the framing. He met with the architect, Mr. Turecki, and advised that in his view, the project was a “substantial reconstruction”, and not a renovation, which would require a different kind of home warranty. He also expressed concern, both in person and by email about the proposed schedule and the scope of the project. However, I was not shown any evidence to suggest, and Mr. Garrow did not testify that he ever specifically linked these concerns to a renegotiation of the Email Agreement with Mr. Sallay, or with a change to the financial terms he cited in his email to Mr. Sallay.

[41] Mr. Garrow stated that he met with Mr. Turecki on Friday, June 11, 2019, and with Mr. Sallay on Saturday June 12, 2019. Mr. Garrow says that his

understanding of the terms of the agreement between himself and Mr. Sallay was that ADC would carry out the plans they were provided and charge a fee. The contract would be payment on a “costs plus scenario”, as described in an unsigned document he created, titled “Construction of a Dwelling Agreement”. Mr. Garrow created or drafted this contract to reflect the renovation agreement between ADC and “Les Sallay of Jeana Ventures Ltd” (the “Draft Contract”) Mr. Garrow said that he put Jeana Ventures Ltd. in the contract because it was Mr. Sallay’s company from the West Vancouver projects.

[42] Mr. Garrow said he sent the Draft Contract to Mr. Sallay on Sunday, June 13, 2019. The Draft Contract was never completed or signed by any party. Mr. Sallay did not deny receiving it, but said he did not specifically recall receiving it or reading it at the time. He said if had read it, at the very least he would have pointed out that his address was wrong in the heading.

[43] According to Mr. Garrow, some of the key terms of the Draft Contract were as follows:

Contract Price

The builder agrees to construction the house according to the plans. As consideration for the builder constructing the house, the buyer agrees to pay the builder’s full costs and expenses plus a fixed fee of 8% TO A MAXIMUM of \$95,000 PLUS GST.

Each 5TH AND 25th OF THE CALENDAR MONTH the builder shall prepare for the buyer itemized statements of the costs and expenses incurred to date.

The buyer will make a regular payment to the builder on THE 15th AND 30TH OF EACH CALENDAR MONTH of the builder’s costs and expenses as stated in the most recent itemized statement.

The builder’s costs and expenses include the following:

All gross wages, employment benefits, costs of workers’ compensation, and unemployment insurance incurred by the builder as the cost of labor during the performance of this contract, plus all salaries for builder’s employees, but only to the extent that their time is spent on work required by this contract;

The cost of all materials, supplies and equipment consumed in this project, including the cost of deliver and transportation of materials;

Rental charges[...]

All land costs [...]

All payments made by the builder for work performed according to subcontracts under this agreement;

All costs incurred for safety [...]
All costs incurred for building and code compliance;
All landscaping [...]
All soil fees [...]

[...]

Change Orders

The buyer may order changes in the work within the terms of this contract, but only by a prior written order and agreement with the builder that states the changes to the contract, the amount of the any additional costs, and the additional number of days to be added to the contract completion date.

Any of the buyers may sign the change order and that signature will be binding upon all the buyers.

[44] Mr. Sallay confirmed that he never signed a version of the Draft Contract.

[45] With respect to the “change orders” term in the Draft Contract, Mr. Sallay stated that he agreed to pay for any changes to the work that he agreed to by email, but that formal change orders were never requested by, nor insisted on by Mr. Garrow.

[46] Both parties agree that the projected finish date for the project was March 2020, and that work began by Mr. Garrow and ADC in July of 2019.

Construction and Termination of the Agreement with ADC

[47] Construction proceeded throughout the rest of 2019 until September of 2020, when Mr. Sallay notified Mr. Garrow and ADC that they were in breach of contractual obligations and terminated the agreement.

[48] For much of time ADC was involved in the construction of the West 1st Avenue Properties, Mr. Sallay was out of the country at his home in California. He received invoices from ADC, typically by email. He said he would usually receive such emails with two attachments, one being a statutory declaration of payments made, and another containing the supporting invoices. On occasion he also received an email from Mr. Garrow containing an internal tally or bookkeeping of costs incurred by ADC in the course of the project.

[49] The statutory declarations were typically signed by Mr. Garrow and a lawyer he worked with. Some were not signed by this lawyer. This will be addressed later

in these reasons.

[50] Mr. Sallay said that he reviewed the invoices and emails to a certain extent, but was not scrutinizing them during this time. He stated that he was trying to retire, and intended to allow others to do the work he had hired them for. He agreed that he was not participating in the “hands-on” manner he had done earlier in his career.

[51] However, in the Spring of 2020 Mr. Sallay became concerned about the mounting costs of the project and realized that he had already paid significantly more than the original total price estimate or budget of \$1,203,057.00, and the project was not close to completed. When he investigated, he discovered what he thought was “double billing” and “fraudulent invoices” submitted to him by Mr. Garrow and ADC.

[52] In terms of the double billing, Mr. Sallay noticed that in his invoices for his workers’ time and materials, the site supervisor (Vlad Construction) was charging a \$8,500 “team leader” fee per month, and Mr. Garrow was also charging him 8%, and the total each had charged for project or site management was now well in excess of the \$93,000 initially quoted in the June 10, 2019 email.

[53] It was also well in excess of the “a fixed fee of 8% TO A MAXIMUM of \$95,000 PLUS GST” that is cited in the Draft Contract that Mr. Garrow purports to rely on as an accurate reflection of the terms of the project.

[54] As an example, he pointed to the total project invoice and statutory declaration for September 26, 2019. In that invoice, there was a Vlad Construction invoice for over \$44,000, which included the \$8,500 “team leader” charge, in addition to over \$100,000 of other contractor invoices, such as building supplies, plumbing and heating, etc. Added to the subtotal of contractor costs (which included Vlad Construction’s charges) of \$148,658.13, the total invoice to Mr. Sallay included a “management fee” of 8%, \$11,892.65 for the month of September.

[55] Mr. Sallay began digging further, and discovered other issues that he considered to be evidence of double invoicing and fraudulent billing. At trial, he presented evidence of at least \$155,000 paid by Mr. Sallay to Mr. Garrow in respect of invoices for contractors who never did work at the project, and who

never received the funds purportedly owed to them as indicted in the ADC invoice and statutory declaration.

[56] In one rather stark example of such a false charge, Mr. Sallay successfully proved at trial that Mr. Garrow had created and submitted an entirely false invoice for \$25,000 from a contractor named Jorgensen Custom Metal and Roofing (“Jorgensen”). The principal of this business testified at trial. He said that the August 15, 2019 invoice submitted to Mr. Sallay under statutory declaration, purportedly for a \$25,000 “Deposit on Contract”, was:

- not in a form he used,
- was not created by him or anyone at his company, and
- the name of his business was misspelled on the invoice template, showing as “Jorgenson” instead of Jorgensen.

[57] In another example, Mr. Garrow billed Mr. Sallay \$30,000 and \$60,000 for a total of \$90,000, with respect to a contractor called Alexa Woodwork. Alexa Woodwork confirmed that it received a \$30,000 deposit from ADC or Mr. Garrow, but had returned this amount when it appeared they would not have time to take on the work at West 1st Avenue Properties. They never received an additional \$60,000 and never received or retained \$90,000 with respect to the West 1st Avenue Properties project, and never did any work there.

[58] Mr. Garrow, under cross, did not have satisfactory explanations for either of these examples. For Jorgensen, he claimed to not know who prepared that invoice and provided a convoluted, and ultimately unsupported explanation as to why the basis for the charge from Jorgensen was located in different document than the one attached to the statutory declaration.

[59] For Alexa Woodwork, Mr. Garrow attempted to describe his practice of billing as being only tangentially connected to the invoices submitted to the payor under statutory declaration. Mr. Garrow’s purported billing methodology was that the attached invoices sometimes directly matched with payments ADC asked Mr. Sallay to make, but sometime it was notional, in that amounts were owed and paid to contractors on a different schedule than what was indicated in any given month of invoices to Mr. Sallay.

[60] I found Mr. Garrow's explanations for these anomalies to be confusing, nonsensical, and ultimately not believable. And, in fact, When Mr. Sallay confronted Mr. Garrow with the \$155,000 in questionable or false billing, Mr. Garrow credited him for the amounts.

[61] Mr. Sallay presented a comprehensive and detailed report from a forensic accountant, Stephen Graff, who also testified at trial. Mr. Graff was qualified to provide expert evidence on forensic accounting and loss quantification. Mr. Graff's qualifications were not disputed by Mr. Garrow, and the conclusions in his report were not substantially challenged at trial, or by way of a responding report.

[62] Mr. Graf reviewed invoices, correspondence, statutory declarations, banking records, and invoices, concluding that there were a number of anomalies in the amounts charged by ADC and Mr. Garrow to Mr. Sallay, including:

- Charging GST to Mr. Sallay when none had been charged to ADC in underlying invoices, and PST improperly charged;
- A number of underlying invoices that provided estimates or quotes, that were charged to Mr. Sallay as if they had been incurred, with no indication that they were ever incurred or paid in subsequent periods;
- For some charged expenses, no underlying supporting documentation;
- Various discrepancies relating to the underlying documentation. This includes the issues with Jorgensen and Alexa Woodwork, along with invoices indicating deliveries to other addresses not related to Mr. Sallay's properties, "split loads" intended for other locations that were wholly charged to Mr. Sallay, and payments to contractors for work that was later done by different contractors at a lesser price, with no credit to Mr. Sallay; and,
- Vlad Construction Inc included the \$8,500 "team lead" in their subcontractor invoices, on top of which an 8% fee was charged by ADC, which appears to "double count" the agreed-to management fees for the project.

[63] Mr. Graf concluded as of August 2020, Mr. Sallay had paid Mr. Garrow and ADC \$1,738,351, at which time he stopped payment and began disputing several items. Mr. Graf found that ADC ultimately charged Mr. Sallay \$1,794,814, inclusive of taxes, and considering approximately \$223,634 in credits Mr. Garrow had already provided with respect to certain disputed items.

[64] Mr. Graf concluded that approximately \$473,501 (net of credits), remains disputed or unsupported with respect to the amounts charged to, and paid by Mr. Sallay.

Cost to Complete the West 1st Avenue Properties Project

[65] Mr. Sallay retained Boda Construction to take over for ADC in October of 2020. Brian Boyd, partner and president of Boda testified at trial that the work done to date (at that time, several months past the agreed to date of completion) was markedly deficient and incomplete, namely:

- 16 door openings were the wrong size;
- Sprinkler system had not been inspected, meaning that the drywall had to be cut open to allow for inspection;
- Interior stair risers were installed incorrectly;
- Concrete topping used to level the floors was crumbling and too thin;
- Electrical feed was improperly installed requiring removal and replacement to pass inspection;
- Storm sewer connection not completed or connected to city drainage, requiring it to be dug up and a new sump put in;
- Poorly finished drywall, that had to be redone;
- Damaged bathroom tiles; and,
- Many items completed contrary to the Plans, appearing as if little to no supervision on the project.

[66] Mr. Boyd estimated that the project was only 50% done, in dollar terms.

[67] Boda charged a \$6,000 management fee, plus site supervision costs to complete the work at the West 1st Avenue Properties location. Mr. Sallay ultimately paid Boda approximately \$1,050,000 to complete the project.

[68] Mr. Garrow disputes that the project was only 50% done. However, he acknowledges that the project proceeded at a much slower pace than originally planned. However, he places the fault for this largely at the feet of Mr. Sallay and Mr. Turecki. He said that by December of 2019, the framing on the project was approximately 60-70% complete, which was substantially behind where they needed to be to complete by March of 2020.

[69] The basis of Mr. Garrow's argument in support of the cost overruns is that there were so many changes to the plans, or the need to supplement or fill out insufficiently detailed plans, so many communications and decisions that had to go back and forth between Mr. Turecki, engineers and other industry professionals, Mr. Sallay and Mr. Garrow. Mr. Garrow commented that because of the incomplete plans and Mr. Sallay's desire for "high end" results that would sell to demanding clients, many decisions were revisited and reviewed, and plan revisions were endlessly considered and debated over email.

[70] Mr. Garrow spent a great deal of trial time going over the many changes that were required or requested by Mr. Sallay or Mr. Turecki over the course of the project. He also commented on the details he says were absent from the plans, and therefore had to be discussed and planned before work could commence. Some of these included a lack of specifications for rain water leaders or gutters, changes in ceiling height for the top floor, changes to window locations, and stair riser heights.

[71] Mr. Turecki, in his testimony, flatly stated that none of the purported changes were major in nature. He commented that you could not make major changes to plans submitted to the City as that would threaten the building permit. He confirmed that they made some changes by way of the city's "minor amendment" process, but never submitted any major changes.

[72] Mr. Turecki also confirmed that he never saw, or signed any formal change orders.

[73] Mr. Garrow continued to maintain that the Draft Contract was to govern the construction project, which was to be on a “costs plus” basis. He did not have an explanation for the fact that the “change order” requirement in the contract was never mentioned, used or required by him at any point during the project, despite what he considered constant major changes that affected the cost and duration of the project. He said that he relied on trust, and the fact that the changes were written in an email, even while he acknowledged that formal change orders were fundamental to the purported “Draft Contract”.

[74] Mr. Sallay also relied on the expert report of William Lam, a quantity surveyor. Mr. Lam’s experience and qualifications were not challenged by Mr. Garrow. Mr. Lam was qualified to provide expert evidence with respect to what the construction work performed at the West 1st Avenue Properties should have cost in total.

[75] Mr. Lam testified that he reviewed several documents provided by Mr. Sallay, including architectural and design documents, Fairtrade’s initial renovation design and specification documents, and structural engineering drawings. He also conducted a site visit.

[76] After applying a cost divided by gross floor area formula, and using the Canadian standard (Trade Division) for trade costs, Mr. Lam concluded that the total cost for the West 1st Avenue Properties renovation project should have been \$1,337,490.

[77] Under cross, Mr. Lam was tested on whether he allowed for the state of the framing (the answer was yes), whether he considered the age of the building (the answer was yes), whether he knew that they had to dig out a floor (the answer was yes), and whether he considered the concept of “substantial reconstruction” as opposed to a renovation. Mr. Lam stated that he did not consider the project to be a substantial reconstruction.

[78] Mr. Lam agreed that if there were substantial changes to the project, the costs he estimated would change. Mr. Lam said that he was not aware of any substantial changes and did not see any change orders reflecting same in his review. He commented that substantial changes would change the costs

estimates, but that generally, he wouldn't expect to see many such changes on a project of this size.

[79] Mr. Garrow relied on one expert, Warren Fletcher. Mr. Fletcher, a residential appraiser, provided opinion evidence in the area of progress of construction. He provided a "retrospective progress inspection for the strata duplex property." Mr. Fletcher was qualified as an expert for the purposes of providing a retrospective progress inspection, but Mr. Sallay argued that his report and testimony should be given little weight. This is because Mr. Fletcher only conducted a "drive-by" of the properties in August of 2023, three years after the work that is at issue was conducted, and that further, he largely based his opinion on inspection reports and the status of the drywall and certain inspections being completed.

[80] Mr. Fletcher determined that as of October 25, 2020, the construction at the West 1st Avenue Properties was 66.9% complete.

[81] Essentially, Mr. Fletcher's report was based on a standard "order of operations" analysis, in which the state of completion is estimated based on "where things would be" based on what work had been completed, which was in turn based on a review of invoices selectively provided by Mr. Garrow. For example, Mr. Fletcher concluded that the drywall was done by reviewing an invoice for drywall.

[82] Under cross, Mr. Fletcher conceded that his information was based solely on information provided by Mr. Garrow, during a "general discussion" of about 10 minutes in duration. He did not request warranty documents, and did not request invoices from any given time period. He said that the invoices he reviewed were selected and provided by Mr. Garrow.

[83] Mr. Fletcher conceded that the "drive by" was simply to get a sense of the neighbourhood, which he agreed was not particularly relevant to a construction progress report, as opposed to a property appraisal for value. He also conceded that his estimate for percentage complete was a quantitative analysis, and not qualitative. This means, for example, that the need to replace 16 doors, would not be factored into the assessment if the door installation had already been, technically, "completed" by confirming payment of certain invoices, or based on the state of the drywall.

[84] Generally speaking, I found Mr. Fletcher's report and testimony to be of minimal assistance to the court. Even if I take his conclusions at face value, which is essentially that an accurate estimate of completeness can be determined by looking at limited information about what had been installed or paid for, I cannot assume that he had been provided with complete and accurate information by Mr. Garrow. Further, I am not convinced that Mr. Fletcher's conclusion of 66.9% completion is meaningful in the context of Mr. Boyd's testimony about the work that had to be redone, and the evidence as a whole in terms of how the project was billed and run by Mr. Garrow.

Other Witnesses

[85] In addition to those witnesses already referred to, other witnesses involved in the project or with knowledge of the work, or with connections to ADC, were called by the parties. I will not review their testimony in detail but will touch on certain evidence raised by their testimony.

[86] Vladislav Pak testified as to his general billing practices, and described the work at issue as a "reconstruction not a renovation." He described the West 1st Avenue Properties as a tear down, but said they had to keep the framing to keep the existing permit.

[87] Mr. Pak acknowledged that he did many projects with Mr. Garrow. He said perhaps five to seven, but when projects were put to him, the total likely was closer to nine or ten. He stopped getting work from Mr. Garrow in 2020, and claimed to still be owed for some work, but provided no details regarding specific invoices or claims against Mr. Garrow.

[88] Mr. Karim Virani was ADC's bookkeeper for 5 years. He testified that he had no role in preparing the statutory declarations submitted to Mr. Sallay, and based all his accounting and entry of data into accounting software on information provided by Mr. Garrow. He provided limited testimony on the subject of PST payments, stating that he made an error with respect to ADC's PST number.

[89] Jacob Boschman is a framing contractor who worked at the West 1st Avenue Properties. Mr. Boschman confirmed that the framing was a significant job at this property as much of the original frame was rotting, which made it a more difficult task that took longer than anticipated.

[90] He testified that there are still amounts owing by Mr. Garrow, but that he never pursued it legally, largely as a courtesy to Vladislav Pak.

[91] Dale Fouquette is the owner of Urban Fireplaces Ltd. He confirmed that his company performed work at the West 1st Avenue Properties and installed two fireplaces in each unit. He reviewed certain invoices purporting to represent invoices from Urban Fireplaces and confirmed they were not prepared by him or his company. The evidence was not clear as to whether those invoices represented overpayments, double billings, or just inaccurate summaries of amounts paid (the amounts that are only notionally connected to work done in a time period, as per Mr. Garrow's explanation for his billing practices). Mr. Fouquette confirmed that he had been fully paid for his company's work.

[92] Philip Heming is the director and owner of Executive Suite Management, a business offering furnished office spaces for rent. He has offices in Park Royal, Broadway and Ash in Vancouver. His business provides office space as well as administrative and secretarial support, reception, invoicing, printing, binding, and courier services for full time tenants.

[93] Mr. Heming confirmed that Mr. Garrow is a client who rents office space, and makes use of several of the above services. Mr. Heming confirmed that he is responsible for hiring and firing employees, and knows who his current employees are, and who his employees were in the time period of November 2019 through to 2020. Mr. Heming confirmed – unequivocally – that he never employed a person named Natalia Avici. The significance of this point will be discussed under "Credibility".

Analysis

[94] Below, I begin with the credibility of the witnesses, then discuss the law of breach of contract and civil fraud, following by my conclusions on the claims of all the parties.

Credibility

[95] Credibility is a key issue in this case. I have kept in mind the principles governing the court's credibility and reliability assessment.

[96] Credibility assessments involve a determination of a witness's testimony based on their veracity or sincerity, in addition to the accuracy of the evidence they provide: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296.

[97] Courts undertake a consideration of various factors, including:

- a) the witness's ability and opportunity to observe events;
- b) the firmness of the witness's memory;
- c) the witness's ability to resist the influence of interest to modify his or her recollection;
- d) whether the witness's evidence harmonizes with independent evidence that has been accepted;
- e) whether the witness changes his or her testimony during direct and cross-examination;
- f) whether the witness's testimony seems unreasonable, impossible or unlikely;
- g) whether the witness has a motive to lie; and,
- h) the demeanour of the witness generally.

See: *Bradshaw* at para. 186; *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414.

[98] Ultimately, when assessing the truthfulness of the testimony of any interested witness, I am guided by the words articulated in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at p. 357:

... In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions ...

[99] The burden of proof in a civil dispute is whether the claim has been proven on a balance of probabilities. Where there is conflicting testimony, "the trial judge

must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred”: *F.H. v. McDougall*, 2008 SCC 53 [*McDougall*] at para. 49.

Previous Case Involving the Same Parties

[100] Mr. Sallay sought leave to refer to the adverse findings made by a justice of this Court in *Jeana Ventures Ltd. v. Garrow*, 2023 BCSC 1831 with respect to Mr. Garrow’s credibility. I granted leave for the reference, and the case was discussed and referred to several times during the trial. I read the reasons for judgment, but only reviewed the credibility findings after the parties had testified, and I after I had come to my own conclusions about the credibility of Mr. Sallay and Mr. Garrow.

[101] The credibility findings with respect to Mr. Garrow are located at paras. 80 to 86 of the reasons. While the business dealings between Mr. Sallay and Mr. Garrow in that case were different in nature, there are some marked similarities in terms of Mr. Garrow’s propensity for dishonesty in the conduct of his business affairs, and also, unfortunately in his testimony under oath. My own concerns with Mr. Garrow’s testimony are remarkably similar to, and are echoed by those described by Justice Winteringham, as she then was.

[102] That said, I based my credibility findings not on Justice Winteringham’s conclusions in the *Jeana Ventures* case, but on the testimony and evidence presented during the trial.

Credibility Assessment

Mr. Sallay

[103] I found Mr. Sallay to be a calm, measured witness. At times he could be forgetful, or vague with respect to details, but not to the extent that I became concerned about his reliability. He was consistent in his testimony and was able to refer to key dates and documents with relative ease and confidence.

[104] Interestingly, counsel for Mr. Sallay encouraged me to consider Mr. Sallay’s advanced age when considering the reliability of his testimony. Conversely, counsel for Mr. Garrow encouraged me to consider Mr. Sallay as a sophisticated and fastidious business person, who I should not believe when he says he failed to review the invoices sent to him by Mr. Garrow.

[105] I found Mr. Sallay more closely resembled the latter description, but his explanation for failing to review the invoices rang true both in reference to his retirement plans, and his past career and way of doing business. He was on the verge of retirement, spending most of his time out of the country. He also had a lifetime of confidence in his own judgment and expertise in the industry, and, likely, a hitherto unshaken belief that he could make a critical error in judgement.

[106] Mr. Sallay's testimony was consistent as between his direct and cross. He readily admitted when he could not recall a detail, or did not remember receiving a document. Mr. Sallay did not try to hide his enmity towards Mr. Garrow, but I did not find his testimony to be overly swayed in an effort to convey his poor opinion of him.

[107] Mr. Sallay also readily admitted that under the terms of the agreement as he understood them, Mr. Garrow would not be making a large profit from the renovation project. His explanation was simple, that in his view, Mr. Garrow was making a great deal on the West Vancouver projects, and he believed that Mr. Garrow, who had renovation experience, provided the numbers in his email in light of that experience, and with a mind to his ongoing business relationship with Mr. Sallay.

[108] Mr. Sallay admitted that he failed to keep close enough tabs on his West 1st Property renovations. He conceded that he saw the invoices sent by Mr. Garrow, including the invoices from Mr. Pak and the 8% charge from Mr. Garrow. He stated that he simply did not put two and two together. I believe him. Mr. Sallay went over his eventual discoveries and the efforts he made to investigate the billing discrepancies in a manner that was believable and supported by the documents.

Mr. Garrow

[109] As stated earlier in these reasons, I did not find Mr. Garrow to be a credible or reliable witness.

[110] His explanation for his purported reliance on the Draft Contract as opposed to the terms cited in the email was not believable on its face, nor was it supported in any respect by the conduct of the parties, with the exception of what I have found was Mr. Garrow's 8% billing for project management outside the terms of the agreement.

[111] Mr. Garrow was argumentative, and often doubled down on small pedantic details, or unrelated facts in support of outlandish explanations for clear dishonesty. As an example, when questioned about the false Jorgensen invoice, Mr. Garrow made repeated references to his “authority” to bill under the Draft Contract, and Mr. Sallay’s refusal to provide details about the holdback amount.

[112] I will refer to one final stark example of Mr. Garrow’s willingness to obfuscate the truth. This is in reference to his tortured, and obviously false explanation for the statutory declarations that were not signed or witnessed by his lawyer. Certain of the statutory declarations have an unreadable signature in the signature block meant for a “Commissioner of Oaths, Notary Public, Justice of the Peace, etc.”, who Mr. Garrow identified as “Natalia Avici”, an executive assistant who worked at Executive Suite Management Inc.

[113] As confirmed by Mr. Heming, no such person ever worked for him at that, or any location. Putting aside, for a moment, the likelihood that Ms. Avici was certainly not a lawyer, notary or commissioner, and was entirely made up by Mr. Garrow, of additional concern to me was Mr. Garrow’s disingenuous argument under oath about who could witness and sign a statutory declaration. Mr. Garrow persisted in arguing that in his view, the word “etc” in the signature block indicated to him that anyone who was not a notary or commissioner or justice of the peace could legally witness and sign a statutory declaration as a valid “etc” person.

[114] Mr. Garrow’s counsel attempted to address this issue by asking Mr. Garrow whether it mattered to him whether he was signing something under oath, witnessed by a proper notary, or having it witnessed by an “etc” person, in terms of his overarching intentions. Mr. Garrow said no, it made no difference. This was meant to suggest to me, I assume, that Mr. Garrow tells the truth regardless of who was witnessing it, but I’m afraid it communicated the exact opposite.

[115] Mr. Garrow’s willingness to testify under oath on something so patently ridiculous, combined with his testimony with respect to the false Jorgensen invoice, among other discrepancies, made it almost impossible for me to consider the balance of his testimony as credible or reliable.

Other Witnesses

[116] I will not review the credibility of most of the other witnesses, as the material credibility issues pertain to the two primary parties.

[117] The remainder of the witnesses, in my view, testified to the best of their ability, with little to gain or lose by doing so.

[118] Mr. Jorgensen testified under extreme protest, objecting vociferously to the time it took away from his work, and the inconvenience of appearing (even remotely) in court. His truculence aside, I found Mr. Jorgensen to be a straightforward and believable witness.

[119] Mr. Pak was a man of few words. He was clearly very intelligent but also extremely guarded; his manner of speaking was spare, blunt, often monosyllabic. Mr. Pak gave the impression of someone who did not want to reveal too much, and who kept his cards extremely close to his chest. He was not forthcoming with fulsome details or additional information, but I did not get the impression he was being dishonest, or that he was involved in duplicity with how he billed for his services.

Breach of Contract

Legal Framework

[120] To establish a legally binding contract there must be an offer, acceptance, and consideration. Both parties must demonstrate an intention to contract and agree on certain terms. Agreement by both parties on the terms forms the foundation of an enforceable contract: *Anani v. Malaspina Coach Lines Ltd.*, 2003 BCSC 700 at para. 5.

[121] The vendor in a purchase and sale agreement must be able to convey the property to be sold. If not, the contract collapses for failure of consideration. To put it another way, the contract collapses because the true owner of the property has not agreed to the sale: *Badesha v. Auja*, 2016 BCCA 294.

[122] To succeed in a claim of breach of contract it must be established that:

- a) the plaintiff had a valid and enforceable contract with the defendant;

- b) the defendant breached that contract; and
- c) the breach resulted in damages or loss.

[123] I find that the parties had a valid and enforceable contract. While brief and sparsely detailed considering the scope of the project and, in hindsight, ensuing events, the terms of the agreement between Mr. Garrow and Mr. Sallay were clearly set out by Mr. Garrow in the Email Agreement, and were clarified, confirmed and agreed to by Mr. Sallay.

[124] While Mr. Garrow may have intended at some point to convert the Email Agreement into a document resembling the Draft Contract, it is clear that this was never done. There was no discussion regarding the terms in the Draft Contract in evidence, most particularly the rather stark difference of the added 8% for ADC. Further, the evidence establishes that other terms of the Draft Contract were never insisted on or mentioned, namely, the use of change orders. The evidence simply does not support any conclusion other than this was a contract template that Mr. Garrow started to fill out, and may have sent, but it did not form the basis of any agreement between the parties.

[125] I find that Mr. Garrow and ADC breached the terms of the contract with respect to both the charges for Project Management, and with respect to the billing practices in general, which caused loss to Mr. Sallay.

Civil Fraud

Legal Framework

[126] Mr. Sallay's alternate position is that the Mr. Garrow and ADC committed civil fraud.

[127] The tort of civil fraud may also be referred to as the tort of deceit or as fraudulent misrepresentation: *LeRoy v TimberWest Forest Corp.*, 2020 BCSC 978 at para. 429 aff'd 2021 BCCA 326; *Singh v. ICBC*, 2022 BCCA 320 at para. 16.

[128] The standard of proof in a case such as this one involving allegations of fraud or deceit is the same as in any other civil case; namely, proof on a balance of probabilities: *McDougall* at para. 49; *Singh* at para. 23; *ICBC v. Mansur*, 2019

BCSC 2261 at para. 18. There is no longer a sliding scale of proof in civil cases where the allegation is criminal or serious: *Mansur* at para. 23.

[129] In *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, Justice Karakatsanis identified the four elements of the tort at para. 21:

- a) a false representation made by the defendant;
- b) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);
- c) the false representation caused the plaintiff to act; and,
- d) the plaintiff's actions resulted in a loss.

[130] There is no duty on a plaintiff to mitigate losses in respect of fraud until they are aware of the fraud *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 70.

[131] This Court has recognized that proof of loss is also required. As Taschereau C.J. held in *Angers v. Mutual Reserve Fund Life Association*, 1904 CanLII 44 (SCC), 35 S.C.R. 330, "fraud without damage gives ... no cause of action" (p. 340).

[132] In the context of contractual relations, civil fraud has traditionally been considered and applied in relation to fraudulent misrepresentations that induce a party or parties to contract. In *Catalyst Pulp & Paper Sales Inc. v. Universal Paper Export Company Ltd.*, 2009 BCCA 307 [*Catalyst Pulp*], Justice Bauman (as he then was) indicated that civil fraud can also operate in respect of fraudulent contractual performance: at paras. 56–61; see also *Shen v. West Continent Development Inc. (BC0844848)*, 2020 BCSC 5 at para. 112.

[133] *Catalyst Pulp* involved a plaintiff that contracted with the defendant to distribute and deliver paper to a customer. In invoices to the plaintiff, the defendant misrepresented certain costs that were not contemplated in the parties' bargain. The plaintiff was successful at trial and on appeal on the ground that these invoices constituted false misrepresentations. The Court of Appeal endorsed the trial judge's findings that the defendant had intended the plaintiff to act on the

misrepresentations and that the plaintiff had relied on the misrepresentations to their detriment: *Catalyst Pulp* at para. 187.

[134] Where civil fraud is ongoing as a feature of contractual performance, that a party carries on under the contract can constitute reliance on a fraudulent representation: *XY, LLC v. Zhu*, 2013 BCCA 352 [XY] at paras. 39–41.

[135] In *XY*, the plaintiff licensed certain technology to the defendants in exchange for royalty payments based on sales. The defendants produced false reports to the plaintiff and underpaid their royalties.

[136] The plaintiff in *XY* was not actually induced to make payments or to otherwise act on a fraudulent basis. Instead, reliance was found on the basis of their continued contractual performance. To this extent, the fourth element of civil fraud may be established on the basis of such reliance.

[137] I find that Mr. Garrow and ADC committed civil fraud when they misrepresented the manner of billing and the charges to Mr. Sallay. This pertains to both to the ongoing charges for project management that were outside the agreement, with respect to inaccurate invoices or the attempts to mislead in creating false invoices, and the deception used with respect to the statutory declarations.

[138] I find that on a balance of probabilities, these actions were intended to ensure continued contractual performance by Mr. Sallay through deception.

Measure of Damages for Contract and Fraud

[139] In *BG Checo International Ltd. v British Columbia Hydro and Power Authority*, [1993] 1 SCR 12, 1993 CanLII 145, Justice La Forest and Justice McLachlin (as she then was) distinguished between damages in contract and tort:

The measure of damages in contract and for the tort of negligent misrepresentation are:

Contract: the plaintiff is to be put in the position it would have been in had the contract been performed as agreed.

Tort: the plaintiff is to be put in the position it would have been in had the misrepresentation not been made.

[140] Mr. Sallay's claims against Mr. Garrow and ADC under both contract come to the same amounts, regardless of whether it is rooted in contract or fraud.

[141] He says that in order to be put into the position he would have been but for the breaches of contract or the fraudulent misrepresentations, Mr. Garrow must pay him \$1,675,145. While not clearly outlined in his submissions, I believe this amount to be the difference between what Mr. Lam estimated the project should have cost (\$1,337,490), and the ultimate cost of the West 1st Avenue Properties project to Mr. Sallay after he paid the three firms who worked on it (\$3,012,635).

[142] He says that in order to be put into the position he would have been but for the breaches of contract or the fraudulent misrepresentations, Mr. Garrow must pay him \$1,675,145.

[143] This amount is the difference between what Mr. Lam estimated the project should have cost (\$1,337,490), and the ultimate cost of the West 1st Avenue Properties project to Mr. Sallay after he paid all three firms who worked on the project over time (\$3,012,635).

[144] My difficulty with this broad method of loss calculation is that it attributes 100% of the cost overrun to Mr. Garrow and ADC in circumstances where the evidence does not support such a result. It may be that the entirety of the work conducted by ADC and Mr. Garrow, Mr. Pak and the other trades and contractors prior to the fall of 2020 was a wash, in that none of the work, materials, improvements or time spent contributed to the value of the home, or to the renovation process.

[145] Mr. Sallay has already had funds returned to him by Mr. Garrow after challenging certain invoices, including those relating to Alexa Woodwork and Jorgensen. Mr. Sallay has not established a firm basis on which to attribute the total cost of Fairtrade's work, and Boda's work *entirely* to Mr. Garrow. Nor does the evidence support a finding that not one penny expended during Mr. Garrow and ADC's time on the project resulted in progress or viable work on the properties.

[146] That said, I accept that Mr. Sallay has presented expert evidence that suggests that the actual cost of the project outstripped what it should have cost by a significant amount, one that very nearly encompasses the entirety of the

amounts charged by ADC and Mr. Garrow. For the most part, the reports presented by Mr. Graff and Mr. Lam were unchallenged at trial.

[147] While I accept the testimony of Mr. Boyd with regard to the quality of the construction done under ADC's watch, I am acutely cognizant that this matter was in no way presented or argued as a construction deficiency case. The parties did not seek to present expert evidence on the quality of materials, or the deficiencies in construction to the level that I can, even on a balance of probabilities, "zero out" the work done, materials supplied during the period of time ADC and Mr. Garrow were involved. I cannot ignore the possibility that the totality of the work done by Boda Construction was necessary for a combination of reasons, including, but not solely because the breaches of contract, misleading billing practices and deceptions of Mr. Garrow and ADC. I simply do not have sufficient information to attribute the entire construction cost overrun, which includes alleged deficient construction, but with minimal or limited information regarding same.

[148] I also cannot attribute the cost of the work performed by Fairtrade as part of the total cost of work, in order to calculate Mr. Garrow and ADC's proportional responsibility of cost overrun.

[149] As a result, I calculate Mr. Sallay's loss as a result of Mr. Garrow and ADC's conduct as follows:

- \$473,501 – based on my acceptance of the conclusions in Mr. Graff's report, regarding unsupported charges and payments.
- The total charged by ADC \$1,794,814 (less the amounts already determined to be unsupported) multiplied by 50%, to reflect the percentage of work Mr. Boyd estimated was completed at termination. This comes to \$660,656.50 reflecting the amount that was overcharged by ADC for that percentage of completion.
- Added together, the amount due to Mr. Sallay as a result of the breaches of contract, or civil fraud is \$1,134,157

Conclusion

[150] I have found that Mr. Garrow and ADC breached its contract with Mr. Sallay and the other plaintiffs by counterclaim. Mr. Garrow plainly cited his proposed terms of the contract in the Email Agreement, which induced Mr. Sallay to engage Mr. Garrow to take on the renovation project. Mr. Sallay not only agreed to those terms, but he clarified them in a later email before moving forward. Mr. Garrow failed to adhere to the terms of the Email Agreement when he double billed for project management, and when he failed to provide true or accurate invoices as support for his monthly billing to Mr. Sallay.

[151] I also found that Mr. Garrow and ADC committed civil fraud with respect to various unsupported payments he obtained from Mr. Sallay. Mr. Garrow obtained payments based on false invoices or amounts owing he made up out of whole cloth, or that he charged based on outdated or inaccurate charges to his benefit. Mr. Garrow also relied on falsely sworn statutory declarations in obtaining payments from Mr. Sallay. Whether this latter ruse was borne out of expedience, laziness or in a clear effort to deceive Mr. Sallay as to the nature of the invoices claimed, it was highly dishonest and misrepresented the truth and the reliability of statutory declarations.

Conclusion on the Liens

[152] I find I have insufficient information or evidence upon which to confirm or maintain the liens still in place or paid into court with respect to the York Avenue Properties. I order that the amount paid into court, with respect to Lien #CA8640110 be returned to Mr. Sallay. I decline to reimburse Mr. Sallay for payments made to release lien CA8640116.

[153] I have already dismissed Mr. Garrow's claim to the \$60,266.28 holdback amount.

Orders

[154] I find in favour of the plaintiffs by counterclaim, and award \$1,134,157 in damages.

[155] I order the amount paid into court with respect to Lien #CA8640110 be returned to Mr. Sallay, but dismiss the claim for reimbursement for other lien

payments.

[156] I dismiss the claims of the plaintiffs, Mr. Garrow and ADC.

Costs

[157] The plaintiffs by counterclaim are entitled to their costs as the successful parties.

[158] Mr. Sallay seeks special costs against Mr. Garrow, but the parties did not make substantive submissions on the matter. While I have found Mr. Garrow to be dishonest in his conduct of business and in certain aspects of his testimony, this is reflected in my credibility findings and in the result. I have not been provided with sufficient submissions or evidence to lead me to find that Mr. Garrow's conduct of the litigation justifies the award of special costs on top of those findings, and I decline to do so on the record before me.

[159] However, if the parties wish to make additional submissions on costs, they may do so within 30 days of the date of this order, in writing, on a reasonable schedule reached either by agreement of counsel, or by seeking my direction through scheduling.

“J. Whately J.”